Appointment

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 2/16/2016 4:31:46 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Hantman, Irene [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ef8ec244f17c4acf9561fbc9b94f1431-Hantman, Ir]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Parsons, Nick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ba9a64331b0449a93ccc46f74d5d1f0-Parsons, Nick]; Piotrowski, Greg [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=40bd03b05b8a409f91fbb8e3432d01ab-Piotrowski, Greg]; Read, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd15b97b60dd487bb865978544f1f6be-Read, David]; Reid, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a44e1a5c23404801bd12621455cde517-Reid, Laure]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Le, Madison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9297d8b52bcb41319ba40d11142ab307-Le, Madison]; Weihrauch, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=74d426b7439045d9a0a65b186ea68b21-Jweihrau]; Cohen, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d94b854e69cd4f9e80db946bf9d1c1b2-Cohen, Janet]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
CC: Patterson, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4905d53acd674f45aab01ff73284ee6d-Patterson, Susan]; Jones, Jacqueline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=16199688d4b34778ace3767cf6acb2af-Jones, Jacqueline]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Stewart, Gwen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3f8c5838943241caadb6005ffaddd7db-gstewart]; Manners, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebdb1392504a4b71894970b1a7bb186c-Manners, Mary]; McKenna, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=451b675850124bf4a9db1d577ee3b9af-McKenna, Ch]

Subject: RFS Small Refinery Issues
Location: RM. 6520 DC/RM. N-120 AA

Start: 2/23/2016 3:00:00 PM
End: 2/23/2016 4:00:00 PM
Show Time As: Busy

ROOM CHANGE TO: N-120 AA

MEETING REQUEST:

OTAQ MEETING REQUEST FORM

Requesting Meeting/Conference Call with: **Christopher Grundler**
Send form to: Gwen Stewart – 202 564-1682

Date of this Request: 2.10.2016

Point of Contact (Name/Number): Janet Cohen (through 2.11.16) 734-214-4511; David Read 734-214-4367; Byron Bunker 734-214-4155

Title of Meeting: RFS Small Refinery Issues

Purpose of Meeting: Brief Chris on program implications and OTAQ options in light of new Congressional direction to DOE that effectively lowers the bar for small refineries seeking RFS hardship exemptions

Priority Status: Critical or time sensitive __X____ Less Immediate _____

Last possible date for meeting: 2/24/16

If the meeting is critical, please explain why: Policy decisions are needed (and may need to be briefed through Janet McCabe) before EPA can act on 2014 hardship petitions. We have pending petitions with near-term deadlines that are fixed under a court settlement agreement.

Location of Meeting: Teleconference AA/DC

Length of Meeting: standard (1 hr)

Key Participants: (List all who need to be notified of the meeting)

Office/Organization	Email Address	Number
Example—		

OTAQ	*bunker.byron@epa.gov*	*(734) 214-4i55*
OTAQ	*hantman.irene@epa.gov*	
OTAQ	*Machiele.paul@epa.gov*	
OTAQ	*parsons.nick@epa.gov*	
OTAQ	*Piotrowski.greg@epa.gov*	
OTAQ	*read.david@epa.gov*	
OTAQ	*reid.lauren@epa.gov*	
OTAQ	*Sutton.tia@epa.gov*	
OTAQ	*le.madison@epa.gov*	
OTAQ	*Weihrauch.john@epa.gov*	
OTAQ	*cohen.janet@epa.gov*	
OGC	*stahle.susan@epa.gov*	
OGC	*Orlin.david@epa.gov*	

NOTE: **Personal Matters / Ex. 6** when the briefing needs to happen, so Byron and David Read are the points of contact if there are any questions. For scheduling purposes, please schedule around availability of green-highlighted names. Yellow highlighted names are required participants, others are optional.

NOTE: All briefing materials must be sent by 4:00 PM the day prior in whatever format you are most comfortable, PPT Slides are not required. If briefing materials are not submitted by 4 pm, the meeting will be rescheduled, unless approved by Chris. (Briefing Materials are to be sent to: OTAQMaterials@epa.gov**).**

Appointment

From: Stewart, Gwen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3F8C5838943241CAADB6005FFADDD7DB-GSTEWART]
Sent: 9/26/2017 7:37:43 PM
To: Cohen, Janet [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d94b854e69cd4f9e80db946bf9d1c1b2-Cohen, Janet]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Parsons, Nick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ba9a64331b0449a93ccc46f74d5d1f0-Parsons, Nick]; Michaels, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a44e1a5c23404801bd12621455cde517-Reid, Laure]; Nelson, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3492adee9fab4a02956fcf63f0de048b-Nelson, Kar]; Piotrowski, Greg [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=40bd03b05b8a409f91fbb8e3432d01ab-Piotrowski, Greg]; McKenna, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=451b675850124bf4a9db1d577ee3b9af-McKenna, Ch]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Li, Ryland (Shengzhi) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7cf0eac9d34b446f88e03f8ec48274f1-Li, Shengzh]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
CC: Davis, Theresa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=44d4095deb124294bc3b24916cb061bf-Davis, Ther]; Le, Madison [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9297d8b52bcb41319ba40d11142ab307-Le, Madison]; Caldwell, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e76309d53f9c47b8a41b784cd68ea7c4-Jcaldwel]; Anderson, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=741befd619d44578be1399b296c7c04a-RAnder02]; Master, Barbora [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2c813860457b42019078b33089aaeee5-bjemelko]; Boylan, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32e90a8aa3b04741a8ffb43f7e8814f5-Boylan, Tho]

Subject: Small Refinery Hardship Topics
Location: RM. 6520 DC/RM. C-174 DOD AA - By Telephone: 866 299-3188, Access Code: 202 564-1103

Start: 10/2/2017 2:00:00 PM
End: 10/2/2017 3:00:00 PM
Show Time As: Busy

ADD A CALL IN NUMBER

MEETING REQUEST:

OTAQ MEETING REQUEST FORM

Requesting Meeting/Conference Call with: **Christopher Grundler**
Send form to: Gwen Stewart – 202 564-1682

Date of this Request: 9.21.17

Point of Contact (Name/Number): Janet Cohen 734-214-4511

Title of Meeting: Options for 2017 small refinery RFS decisions

Purpose of Meeting: Pre-brief Chris; prepare for discussion/briefing with political leadership

Priority Status: Critical or time sensitive __X____ Less Immediate _____

Last possible date for meeting: 10_4_17

If the meeting is critical, please explain why: We have received petitions for 2017 and are under a 90-day statutory deadline to respond. Need policy direction from political leadership before we can proceed.

Location of Meeting: video conference AA/DC

Length of Meeting: standard

Key Participants: (List all who need to be notified of the meeting)

Office/Organization	Email Address	Number
Example—		
OTAQ	*cohen.janet@epa.gov*	*(734) 214-4511*
OTAQ	*bunker.byron@epa.gov*	*(734)-214-4155*
OTAQ	*parsons.nick@epa.gov*	
OTAQ	*michaels.lauren@epa.gov*	
OTAQ	*nelson.karen@epa.gov*	

OTAQ	*piotrowski.greg@epa.gov*
OTAQ	*mckenna.chris@epa.gov*
OTAQ	*Machiele.paul@epa.gov*
OTAQ	*hengst.benjamin@epa.gov*
OTAQ	*Sutton.tia@epa.gov*
OGC	*stahle.susan@epa.gov*
OGC	*li.ryland@epa.gov*
OGC	*Orlin.david@epa.gov*

NOTE: All briefing materials must be sent by 4:00 PM the day prior in whatever format you are most comfortable, PPT Slides are not required. If briefing materials are not submitted by 4 pm, the meeting will be rescheduled, unless approved by Chris. (Briefing Materials are to be sent to: OTAQMaterials@epa.gov).

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 6/20/2018 3:04:29 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Kundinger, Kelly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3c9a5d16e2244079e222f342bf9992f-Kundinger,]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: Re: Friday update

My edits in the below. Sorry no RLSO, on phone. Attorney Client; DPP / Ex. 5

Attorney Client; DPP / Ex. 5

Sent from my iPhone

On Jun 20, 2018, at 9:52 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Yes- perfect. I added a bit more- use the below. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 20, 2018, at 9:49 AM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:

Mandy- I just sent them the summary you sent RJ last night. If that's still accurate.

On Jun 20, 2018, at 9:44 AM, Daniell, Kelsi <daniell.kelsi@epa.gov> wrote:

Deliberative Process / Ex. 5

Let me know what questions you all have re press aspect.

Kelsi

Kelsi Daniell
Press Secretary

Administrator Scott Pruitt
202-564-2413
daniell.kelsi@epa.gov

Message

From: McCabe, Janet [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D2CA413E5A534895BD6042D82E5B5F63-MCCABE, JANET]
Sent: 3/9/2015 10:00:49 PM
To: Schmidt, Lorie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f471d4b316f74b0591322b5c63f1d01c-Schmidt, Lorie]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Page, Steve [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=269c9581404542e79501f2bf0379a2ad-SPAGE]
Subject: FW: ARLO Deadline Calendar for the Week of March 9, 2015
Attachments: ARLO Deadline Calendar for the Week of March 9 2015.docx

Hi Lorie, Mike and Steve-

This note was in Cheryl's memo that came out today, but I can't tell what the case is about from her summary. Could someone please send a brief summary? Thanks.

Deliberative Process; ACP / Ex. 5

-----Original Message-----
From: Graham, Cheryl
Sent: Monday, March 09, 2015 5:30 PM
To: Page, Steve; Harnett, Bill; Tsirigotis, Peter; Dougherty, Joseph-J; Henigin, Mary; Davis, Alison; Montoro, Marta; Rush, Alan; Ketcham-Colwill, Nancy; Schillo, Bruce; Embrey, Patricia; Holmes, Carol; Mazakas, Pam; Millett, John; Drinkard, Andrea; South, Peter; Mary.Edgar@usdoj.gov; Lipshultz, Jon (ENRD); Christopher.Vaden@usdoj.gov; Goffman, Joseph; McCabe, Janet; Mccarthy, Gina; Wood, Anna; Edwards, Crystal; Mathias, Scott; Chapman, Apple; Chappell, Linda; South, Mia; Schmidt, Lorie; DeMocker, Jim; Cortelyou-Lee, Jan; Smith, Kristi; Powers, Tom; Schachter, Scott (ENRD); russell.young@usdoj.gov; stephen.samuels@usdoj.gov; Stewart, Lori; Doyle, Andrew (ENRD); Hill, Leslie (ENRD); Maghamfar, Dustin (ENRD); Alfaro, Carlos; Mitchell, Ken; Wortman, Eric; Powell, Keri; Knapp, Kristien
Subject: ARLO Deadline Calendar for the Week of March 9, 2015

Attached is the current deadline calendar and other information that is sent out weekly from ARLO. If information in the attachment raises questions, please contact Lorie Schmidt. Thanks

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

DOE Application of the Small Refinery Scoring Matrix for the Island Energy Services, LLC, Hawaii Refinery for a 2016 Exemption as an Obligated Party under the Renewable Fuel Standard

Background

Section 211(o)(9)(A)(ii) of the CAA required that DOE conduct a study assessing whether the Renewable Fuel Standard (RFS) would impose a "disproportionate economic hardship" on small refineries[1]. This study was required to determine whether the blanket exemption for small refineries as obligated parties under the RFS should be extended for two years after 2010, the year that the blanket exemption expired. EPA was required to grant the continued exemption to all small refineries that were determined by DOE to experience "disproportionate economic hardship" if they became obligated parties after 2010.

In order to comply with the CAA, DOE developed a methodology to determine whether specific refineries would experience "disproportionate economic hardship." The methodology required business information for the small refineries. This was acquired through a survey of all small refineries. This survey was sent to the owners of 59 refineries. DOE received data for 25 refineries but only analyzed the data for 18 of these refineries[2]. After completing the *Small Refinery Exemption Study* it was provided by the Secretary of Energy to the EPA Administrator.

The CAA also requires that EPA consult with DOE concerning individual applications by small refineries for an exemption from RFS requirements.[3] In order to fulfill this requirement, DOE has applied the scoring matrix, developed for the Small Refinery Exemption Study, to refineries requesting an exemption. DOE employs information provided by EPA from the applicants' request to see whether this refinery would have received an exemption based on the criteria used in the *Small Refinery Exemption Study*. This scoring matrix includes two general categories; a structural and economic metric and a viability metric that together are used to evaluate whether a refinery faced disproportionate economic hardship.

[1] Small refineries are defined as those facilities with aggregate crude oil throughput that does not exceed 75,000 barrels per calendar day.
[2] Seven survey responses were not analyzed because the refineries for which the survey response was provided did not meet the CAA definition of a small refinery or because the survey response was incomplete.
[3] The CAA states "(B) Petitions based on disproportionate economic hardship; (i) Extension of exemption. A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.; (ii) Evaluation of petitions In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.; (iii) Deadline for action on petitions The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

Island Energy Services, LLC, Hawaii Refinery

Starting in September, 2017, EPA consulted with DOE to aid in their assessment of whether Island Energy Services, LLC, Hawaii refinery should receive [redacted] 2016. DOE has been asked to respond by providing updated values for the scoring matrix for this refinery.

Based on the results from the DOE RFS small refinery exemption scoring matrix, described above, the Island Energy Services, LLC, Hawaii refinery received a score of [redacted] in the structural and economic metric and a score of [redacted] in the viability metric. [redacted] Island Energy Services, LLC, Hawaii refinery [redacted]

DOE Application of the Small Refinery Scoring Matrix for the Island Energy Services, LLC, Hawaii Refinery for a 2016 Exemption as an Obligated Party under the Renewable Fuel Standard

Background

Section 211(o){9){A)(ii) of the CAA required that DOE conduct a study assessing whether the Renewable Fuel Standard (RFS) would impose a "disproportionate economic hardship" on small refineries[1]. This study was required to determine whether the blanket exemption for small refineries as obligated parties under the RFS should be extended for two years after 2010, the year that the blanket exemption expired. EPA was required to grant the continued exemption to all small refineries that were determined by DOE to experience "disproportionate economic hardship" if they became obligated parties after 2010.

In order to comply with the CAA, DOE developed a methodology to determine whether specific refineries would experience "disproportionate economic hardship." The methodology required business information for the small refineries. This was acquired through a survey of all small refineries. This survey was sent to the owners of 59 refineries. DOE received data for 25 refineries but only analyzed the data for 18 of these refineries[2]. After completing the *Small Refinery Exemption Study* it was provided by the Secretary of Energy to the EPA Administrator.

The CAA also requires that EPA consult with DOE concerning individual applications by small refineries for an exemption from RFS requirements.3 In order to fulfill this requirement, DOE has applied the scoring matrix, developed for the Small Refinery Exemption Study, to refineries requesting an exemption. DOE employs information provided by EPA from the applicants' request to see whether this refinery would have received an exemption based on the criteria used in the *Small Refinery Exemption Study.* This scoring matrix includes two general categories; a structural and economic metric and a viability metric that together are used to evaluate whether a refinery faced disproportionate economic hardship.

---

[1] Small refineries are defined as those facilities with aggregate crude oil throughput that does not exceed 75,000 barrels per calendar day.

[2] **Seven survey responses were not analyzed because the refineries for which the survey response was** provided did not meet the CAA definition of a small refinery or because the survey response was incomplete.

[3] The CAA states "(BJ Petitions based on disproportionate economic hardship; (i) Extension of exemption. A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.; (ii) Evaluation of petitions In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.; (iii) Deadline for action on petitions The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

Island Energy Services, LLC, Hawaii Refinery

Starting in January, 2018, EPA consulted with DOE to aid in their assessment of whether Island Energy Services, LLC, Hawaii refinery should receive [redacted] 2017. DOE has been asked to respond by providing updated values for the scoring matrix for this refinery.

Based on the results from the DOE RFS small refinery exemption scoring matrix, described above, the Island Energy Services, LLC, Hawaii refinery received a score of [redacted] in the structural and economic metric and a score of [redacted] in the viability metric. [redacted] Island Energy Services, LLC, Hawaii refinery [redacted]

Terms:		Scoring	IES Hawaii Refinery 2016
1 Disproportionate Structural Impact Metrics			**PADD 5**
a Access to capital/credit		0 = Good Access (BB- rating or above) 5 = Moderate Access (rating in B's) 10 = Poor Access (C Rating or below)	(b)(5) asserted by D [redacted]
b Other business lines besides refining & marketing		0 = Other Lines, 10 = No Other Lines	
c Market acceptance of renewables (Local)		0 = Products Accepted 10 = Product not accepted	
I E10		0 = High acceptance, 5 = some resistance	
ii E85		Not scored because of small E85 volumes	
iii Biodiesel		Not scored because of difficulty determining measurement	
d Percentage of diesel production		0 = D/(G+D) < Industry Avg. 5 D/(G+D) < 40 % 10 = D/(G+D) > 40	
e Subject to exceptional state regulations		0 = not subject, Some additional barriers 10 = subject to exceptional state regs	
		Subtotal	
2 Disproportionate Economic Impact Metrics			
a Relative refining margin ranking		10 = Negative 5 = Above 0 and Below 3 Year Industry Average 0 = Above 3 Year Industry Average	
b Renewable fuel blending (% of production)			
I Ethanol blending		0 = 75%+, 5 = 25-74%, 10 = <25%	
ii Biodiesel blending (not used)		0 = 1.1% of diesel production, 1 = <1.1%	
iii Other Advanced Biofuel blending (not used)		0 = some blending, 10 = no blending	
c In a niche market		0 = niche 5 = moderate niche impact 10 = no niche	
d RINs net revenue or cost		0 = revenue > cost, 10 = revenue < cost	
		Subtotal (b)(5) asserted by [redacted] **Weighting**	
3 Viability Metrics			
a Compliance cost eliminates efficiency gains (impairment)		0 = no impact on efficiency, 5 = moderate impact 10 = impact on efficiency	
b Individual special events		0 = no special event 5= moderate event 10 = special event impacting viability	
c Compliance costs likely to lead to shut down		0 = not likely to shut down 10 = likely to shut down	
		Subtotal (b)(5) asserted by DO [redacted] **Weighting**	
		Total	

Terms:	Scoring	Weighting	Island Energy 2016	
1 Disproportionate			[redacted]	
a Access to capital/credit	0 = Good Access (BB- rating or above), 5 = Moderate Access (rating in B's) 10 = Poor Access (C Rating or below)			
b Other business lines besides refining & marketing	0 = Other Lines, 10 = No Other Lines			
c Market acceptance of renewables (Local)	0 = Products Accepted, 10 = Product not accepted			
i E10	0 = High acceptance, 5 = some resistance			
ii E85	Not scored because of small E85 volumes			
iii Biodiesel	Not scored because of difficulty determining measurement			
d Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 D/(G+D) < 40 % 10 = D/(G+D) > 40			
e Subject to exceptional state regulations	0 = not subject, Some additional barriers 10 = subject to exceptional state regs			
Subtotal				
2 Economic				
a Relative refining margin ranking	10 = Negative, 5 = Above 0 and Below 3 Year Industry Average, 0 = Above 3 Year Industry Average			
b Renewable fuel blending (% of production)				
i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%			
ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%			
iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending			
c In a niche market	0 = niche 5 = moderate niche impact 10 = no niche			
d RINs net revenue or cost	0 = revenue > cost, 10 = revenue < cost			
Subtotal 0		[redacted]		
3 Hardship				
a Compliance cost eliminates efficiency gains (impairment	0 = no impact on efficiency, 5 = moderate impact 10 = impact on efficiency			
b Individual special events	0 = no special event, 5= moderate event 10 = special event impacting viability			
c Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down			
Subtotal **0**				
Total		[redacted]		

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 02 2018

OFFICE OF
AIR AND RADIATION

Mr. Timothy J. Parker
Vice President & General Counsel
Kapolei Refinery
IES Downstream, LLC
91-480 Malakole Street
Kapolei, Hawaii 96707-1807

Dear Mr. Parker:

I am writing in response to the petition from Island Energy Services, LLC (IESC) for an extension, from November 1, 2016, through December 31, 2016, of the small refinery exemption from the requirements of the renewable fuel standard (RFS) program for the IES Downstream, LLC refinery (IESKR) in Kapolei, Hawaii. As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. IESKR's refinery qualifies as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition the U.S. Environmental Protection Agency to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, IESC submitted a petition to the EPA dated June 26, 2017 to extend the exemption for the IESKR from November 1, 2016 through December 31, 2016.

Based on the information submitted in your petition, and after consultation with the Department of Energy, the EPA has decided to grant an extension, from November 1, 2016, through December 31, 2016, of IESKR's RFS small refinery temporary exemption. This means that from November 1, 2016 through December 31, 2016, IESKR's transportation fuel production is not subject to the percentage standards of 40 CFR 80.1405, and IESKR is not subject to the requirements of an obligated party for fuel produced at the Kapolei, Hawaii refinery during that period. This temporary extension of IESKR's exemption does not apply to its imports of diesel fuel for resale.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program For Island Energy Services, LLC's Kapolei Hawaii Refinery

Contains Information Claimed by Island Energy Services, LLC To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Island Energy Services, LLC ("IESC") dated June 26, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for the Kapolei Refinery's ("IESKR") RFS obligations for the period from November 1, 2016 through December 31, 2016. The IESKR was acquired by IESC through its affiliate IES Downstream, LLC, from Chevron U.S.A., Inc., on November 1, 2016.[1] For the reasons described herein, EPA is granting IESC's request for an extension of IESKR's RFS small refinery exemption for the period from November 1, 2016, through December 31, 2016.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In earlier decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This is due to language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[2] Because IESKR's first ranking (disproportionate impacts) and second ranking (viability) are both greater than 1, DOE's recommendation to EPA is a 100 percent waiver for IESKR (i.e., a full exemption of IESKR's temporary exemption).

For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can

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[1] Petition at 2.
[2] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that DOE found that IESKR demonstrated unfavorable structural conditions. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that DOE found that IESKR's viability was impacted; DOE determined that the cost of compliance with its RFS obligations would impair efficiency gains and impact the refinery's economic viability. [3] Therefore DOE recommended a 100 percent waiver for IESKR on the basis of both structural conditions and viability concerns.

Table 1[4]
DOE Evaluation of IESKR's Petition

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	10
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	10
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
i	E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	0
ii	E85	Not scored because of small E85 volumes	
iii	Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	0
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	0

[3] From DOE recommendation for IESKR transmitted to EPA on January 3, 2018.

[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3-year industry average 5 = Positive, below 3-year industry average 10= Negative	10
b	Renewable fuel blending (% of production)		
i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	0
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	10
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		5.0
	Ranking (subtotal x 0.50)		**2.5**
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	10
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	0
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	0
	Subtotal (average)		3.3
	Ranking (subtotal x 0.50)		**1.7**

DOE's analysis recommending a 100 percent waiver is only one factor in EPA's evaluation regarding whether to grant or deny a petition for a small refinery. EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were \$11.40/bbl and \$6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). IESKR was acquired by IESC on November 1, 2016, and financial data for the IESKR petition are only available for the period November 1, 2016, through December 31, 2016. IESKR's average gross margin and net margin for the period November 1, 2016, through December 31, 2016 were reported by IESC to be -\$0.70/bbl and -\$9.61/bbl, respectively. (Sec. 3.6-7, DOE Form PI-588, petition at Tab D.)

[6] DOE has not scored this category for any hardship petition evaluations.

IESC submitted a petition to EPA dated June 26, 2017 for an extension of the RFS small refinery exemption for IESKR for the period from November 1, 2016, through December 31, 2016. IESC submitted supplemental financial information on September 26, 2017. Hawaii is a geographically-isolated island chain. The IESC petition states that IESKR must import into Hawaii feedstocks, including blending components, from mainland U.S. or international sources. Therefore, because of its location, the refinery faces an economic cost disadvantage compared to U.S. mainland refineries.[7] IESC also stated that the costs of refinery acquisition, acquiring existing inventory, and securing future feedstocks have resulted in financing arrangements that have leveraged IESKR's assets and inventories and left no assets available to secure additional capital market financing;[8] IESC stated that IESKR's purchased RIN costs for the period from November 1, 2016, through December 31, 2016 were $3.9 million.[9] IESC reported a net loss of approximately $65.9 million for the IESKR for the period from November 1, 2016, through December 31, 2016; this loss included approximately $28.1 million in acquisition and integration-related expense.[10] IESC also reported gross and net refining margins of -$0.70/bbl and -$9.61/bbl, respectively for the same period.[11] Although IESKR can blend its gasoline production to E10, IESC stated that it pays a premium for ethanol because there are no ethanol producers in Hawaii. IESC purchases ethanol from the mainland United States, at increased cost due to the costs of transporting the ethanol from the mainland.[12]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, IESKR's petition presents financial information that documents an operating loss along with other metrics of poor economic performance in 2016. Based on our review of all of the available information about IESKR, and our consultation with DOE, EPA has concluded that IESKR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2016. Therefore, EPA is granting IESC's request for a temporary extension of IESKR's small refinery RFS hardship exemption for the period from November 1, 2016, to December 31, 2016.

EPA's decision is consistent with DOE's finding that IESKR experienced disproportionate impacts in 2016 and therefore may be granted relief from its RFS obligations for the period from November 1, 2016, to December 31, 2016. DOE recommended a 100% waiver, and EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[13]

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[7] Petition at 2.

[8] Petition at 6.

[9] IESKR 2016 RFS compliance cost spreadsheet, submitted as a petition supplement, September 25, 2017.

[10] IESKR profit and loss statement for year ended December 31, 2016, submitted as a petition supplement on September 26, 2017.

[11] Form PI-588, Sec. 3.7, filed as part of the petition, dated June 26, 2017.

[12] Petition at 7.

[13] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

This temporary extension of IESKR's exemption only applies to IESKR's transportation fuel production, and does not apply to its transportation fuel imports.[14] In CAA section 211(o)(9), Congress created a temporary exemption program for "small refineries," which it defined as refineries with an average annual aggregate daily crude oil throughput of no more than 75,000 barrels, CAA section 211(o)(1)(K); accord 40 CFR 80.1401. Thus, eligibility for the small refinery exemption program depends on the quantity of crude oil a refinery processes and potentially refines into transportation fuel. Imports of finished transportation fuel – fuel that the refinery itself has not refined from crude oil – do not fit into this scheme.

Moreover, EPA believes it would be inappropriate to exempt a petitioner's imports simply because it owns a small refinery. In the RFS program, Congress specifically distinguished between refineries and importers, see CAA 211(o)(2)(A)(iii), (o)(3)(B)(ii)(I),[15] and created a temporary exemption only for small refineries, not for importers, small or otherwise. Likewise, EPA's regulations provide that the RFS small refinery exemption only applies to "[t]ransportation fuel produced at a refinery by a refiner," not to imports of finished transportation fuel. 40 CFR 80.1441(a).[16]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[14] IESC's petition stated that, during the relevant time period, IESKR produced only gasoline, not diesel, and also imported diesel. Thus, this exemption only applies to IESKR's gasoline production, not to its diesel imports.
[15] See also CAA section 211(o)(5)(A)(i), (o)(5)(E) (distinguishing between refining and importing of transportation fuel.)
[16] See also 40 CFR 80.1441(a)(4)("This exemption shall only apply to refineries that process crude oil through refinery processing units"); 40 CFR 80.1441(e)(1)-(2) (allowing for extensions of the exemption in paragraph (a)); 75 FR 14736 (stating that the original RFS2 small refinery exemption exempts "all transportation fuel produced by small refineries" and that refineries may apply for case-by-case hardship extension of that exemption).

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program For Island Energy Services, LLC's Kapolei Hawaii Refinery

Contains Information Claimed by Island Energy Services, LLC To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Island Energy Services, LLC ("IESC") dated June 26, 2017, for an extension of the Renewable Fuel Standard (RFS) small refinery exemption for the Kapolei Refinery's ("IESKR") RFS obligations for the period from November 1, 2016 through December 31, 2016. The IESKR was acquired by IESC through its affiliate IES Downstream, LLC, from Chevron U.S.A., Inc., on November 1, 2016.[1] For the reasons described herein, EPA is granting IESC's request for an extension of IESKR's RFS small refinery exemption for the period from November 1, 2016, through December 31, 2016.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery, (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

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For the purposes of implementing CAA section 211(o)(9) for 2016 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year for the refining industry as a whole may exacerbate economic problems for small refineries that face disproportionate impacts. Throughout the industry, refineries reported lower net refining margins in 2016. This industry-wide downward trend can

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[1] Petition at 2.
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result in tangible effects on small refineries with adverse structural conditions, including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that DOE found that IESKR demonstrated unfavorable structural conditions. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

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DOE Evaluation of IESKR's Petition

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i	E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	0
ii	E85	Not scored because of small E85 volumes	
iii	Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	0
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	0

[3] From DOE recommendation for IESKR transmitted to EPA on January 3, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
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i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	0
ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	10
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		5.0
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3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	10
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DOE's analysis recommending a 100 percent waiver is only one factor in EPA's evaluation regarding whether to grant or deny a petition for a small refinery. EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/bbl and $6.52/bbl, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). IESKR was acquired by IESC on November 1, 2016, and financial data for the IESKR petition are only available for the period November 1, 2016, through December 31, 2016. IESKR's average gross margin and net margin for the period November 1, 2016, through December 31, 2016 were reported by IESC to be -$0.70/bbl and -$9.61/bbl, respectively. (Sec. 3.6-7, DOE Form PI-588, petition at Tab D.)

[6] DOE has not scored this category for any hardship petition evaluations.

IESC submitted a petition to EPA dated June 26, 2017 for an extension of the RFS small refinery exemption for IESKR for the period from November 1, 2016, through December 31, 2016. IESC submitted supplemental financial information on September 26, 2017. Hawaii is a geographically-isolated island chain. The IESC petition states that IESKR must import into Hawaii feedstocks, including blending components, from mainland U.S. or international sources. Therefore, because of its location, the refinery faces an economic cost disadvantage compared to U.S. mainland refineries.[7] IESC also stated that the costs of refinery acquisition, acquiring existing inventory, and securing future feedstocks have resulted in financing arrangements that have leveraged IESKR's assets and inventories and left no assets available to secure additional capital market financing;[8] IESC stated that IESKR's purchased RIN costs for the period from November 1, 2016, through December 31, 2016 were $3.9 million.[9] IESC reported a net loss of approximately $65.9 million for the IESKR for the period from November 1, 2016, through December 31, 2016; this loss included approximately $28.1 million in acquisition and integration-related expense.[10] IESC also reported gross and net refining margins of -$0.70/bbl and -$9.61/bbl, respectively for the same period.[11] Although IESKR can blend its gasoline production to E10, IESC stated that it pays a premium for ethanol because there are no ethanol producers in Hawaii. IESC purchases ethanol from the mainland United States, at increased cost due to the costs of transporting the ethanol from the mainland.[12]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of a DEH. As described above, IESKR's petition presents financial information that documents an operating loss along with other metrics of poor economic performance in 2016. Based on our review of all of the available information about IESKR, and our consultation with DOE, EPA has concluded that IESKR will experience DEH that can be relieved in whole or in part by removing its RFS compliance obligations for 2016. Therefore, EPA is granting IESC's request for a temporary extension of IESKR's small refinery RFS hardship exemption for the period from November 1, 2016, to December 31, 2016.

EPA's decision is consistent with DOE's finding that IESKR experienced disproportionate impacts in 2016 and therefore may be granted relief from its RFS obligations for the period from November 1, 2016, to December 31, 2016. DOE recommended a 100% waiver, and EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[13]

[7] Petition at 2.
[8] Petition at 6.
[9] IESKR 2016 RFS compliance cost spreadsheet, submitted as a petition supplement, September 25, 2017.
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[11] Form PI-588, Sec. 3.7, filed as part of the petition, dated June 26, 2017.
[12] Petition at 7.
[13] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

This temporary extension of IESKR's exemption only applies to IESKR's transportation fuel production, and does not apply to its transportation fuel imports.[14] In CAA section 211(o)(9), Congress created a temporary exemption program for "small refineries," which it defined as refineries with an average annual aggregate daily crude oil throughput of no more than 75,000 barrels, CAA section 211(o)(1)(K); accord 40 CFR 80.1401. Thus, eligibility for the small refinery exemption program depends on the quantity of crude oil a refinery processes and potentially refines into transportation fuel. Imports of finished transportation fuel – fuel that the refinery itself has not refined from crude oil – do not fit into this scheme.

Moreover, EPA believes it would be inappropriate to exempt a petitioner's imports simply because it owns a small refinery. In the RFS program, Congress specifically distinguished between refineries and importers, see CAA 211(o)(2)(A)(iii), (o)(3)(B)(ii)(I),[15] and created a temporary exemption only for small refineries, not for importers, small or otherwise. Likewise, EPA's regulations provide that the RFS small refinery exemption only applies to "[t]ransportation fuel produced at a refinery by a refiner," not to imports of finished transportation fuel. 40 CFR 80.1441(a).[16]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

[14] IESC's petition stated that, during the relevant time period, IESKR produced only gasoline, not diesel, and also imported diesel. Thus, this exemption only applies to IESKR's gasoline production, not to its diesel imports.
[15] See also CAA section 211(o)(5)(A)(i), (o)(5)(E) (distinguishing between refining and importing of transportation fuel.)
[16] See also 40 CFR 80.1441(a)(4)("This exemption shall only apply to refineries that process crude oil through refinery processing units"); 40 CFR 80.1441(e)(1)-(2) (allowing for extensions of the exemption in paragraph (a)); 75 FR 14736 (stating that the original RFS2 small refinery exemption exempts "all transportation fuel produced by small refineries" and that refineries may apply for case-by-case hardship extension of that exemption).

DOE Application of the Small Refinery Scoring Matrix for the Island Energy Services, LLC, Hawaii Refinery for a 2016 Exemption as an Obligated Party under the Renewable Fuel Standard

Background

Section 211(o)(9)(A)(ii) of the CAA required that DOE conduct a study assessing whether the Renewable Fuel Standard (RFS) would impose a "disproportionate economic hardship" on small refineries[1]. This study was required to determine whether the blanket exemption for small refineries as obligated parties under the RFS should be extended for two years after 2010, the year that the blanket exemption expired. EPA was required to grant the continued exemption to all small refineries that were determined by DOE to experience "disproportionate economic hardship" if they became obligated parties after 2010.

In order to comply with the CAA, DOE developed a methodology to determine whether specific refineries would experience "disproportionate economic hardship." The methodology required business information for the small refineries. This was acquired through a survey of all small refineries. This survey was sent to the owners of 59 refineries. DOE received data for 25 refineries but only analyzed the data for 18 of these refineries[2]. After completing the *Small Refinery Exemption Study* it was provided by the Secretary of Energy to the EPA Administrator.

The CAA also requires that EPA consult with DOE concerning individual applications by small refineries for an exemption from RFS requirements.[3] In order to fulfill this requirement, DOE has applied the scoring matrix, developed for the Small Refinery Exemption Study, to refineries requesting an exemption. DOE employs information provided by EPA from the applicants' request to see whether this refinery would have received an exemption based on the criteria used in the *Small Refinery Exemption Study*. This scoring matrix includes two general categories; a structural and economic metric and a viability metric that together are used to evaluate whether a refinery faced disproportionate economic hardship.

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Island Energy Services, LLC, Hawaii Refinery

Starting in January, 2018, EPA consulted with DOE to aid in their assessment of whether Island Energy Services, LLC, Hawaii refinery should receive [redacted] (b)(5) asserted by DOE 2017. DOE has been asked to respond by providing updated values for the scoring matrix for this refinery.

Based on the results from the DOE RFS small refinery exemption scoring matrix, described above, the Island Energy Services, LLC, Hawaii refinery received a score of [redacted] (b)(5) in the structural and economic metric and a score of [redacted] (b)(5) in the viability metric. [redacted] (b)(5) the Island Energy Services, LLC, Hawaii refinery [redacted] (b)(5) asserted by DOE

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The CAA also requires that EPA consult with DOE concerning individual applications by small refineries for an exemption from RFS requirements.3 In order to fulfill this requirement, DOE has applied the scoring matrix, developed for the Small Refinery Exemption Study, to refineries requesting an exemption. DOE employs information provided by EPA from the applicants' request to see whether this refinery would have received an exemption based on the criteria used in the *Small Refinery Exemption Study.* This scoring matrix includes two general categories; a structural and economic metric and a viability metric that together are used to evaluate whether a refinery faced disproportionate economic hardship.

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Island Energy Services, LLC, Hawaii Refinery

Starting in September, 2017, EPA consulted with DOE to aid in their assessment of whether Island Energy Services, LLC, Hawaii refinery should receive [redacted] 2016. DOE has been asked to respond by providing updated values for the scoring matrix for this refinery.

Based on the results from the DOE RFS small refinery exemption scoring matrix, described above, the Island Energy Services, LLC, Hawaii refinery received a score of [redacted] in the structural· and economic metric and a score of [redacted] in the viability metric. [redacted] Island Energy Services, LLC, Hawaii refinery [redacted]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 23 2018

OFFICE OF
AIR AND RADIATION

Mr. Timothy J. Parker
Vice President & General Counsel
Kapolei Refinery
IES Downstream, LLC
91-480 Malakole Street
Kapolei, Hawaii 96707-1807

Dear Mr. Parker:

I am writing in response to the petition from Island Energy Services Downstream, LLC ("IES") for a one-year extension of the small refinery exemption for 2017 from the requirements of the Renewable Fuel Standard (RFS) program for Island Energy Services Downstream, LLC's ("IES's") refinery in Kapolei, Hawaii (the "Kapolei Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010. The Kapolei Refinery qualified as a small refinery that was covered by this temporary exemption.

Pursuant to CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2) small refineries may petition EPA to extend the temporary RFS exemption on the basis that compliance with the RFS requirements will cause "disproportionate economic hardship." Pursuant to these provisions, IES submitted a petition to EPA dated December 20, 2017 to extend the exemption for the Kapolei Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of IES's RFS small refinery temporary exemption. This means that from January 1, 2017 through December 31, 2017, the Kapolei Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and IES is not subject to the requirements of an obligated party for fuel produced at the Kapolei Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For Island Energy Services Downstream, LLC's Kapolei, Hawaii Refinery

Contains Information Claimed by Island Energy Services Downstream, LLC To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from Island Energy Services Downstream, LLC ("IES") dated December 20, 2017, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for IES's Kapolei, Hawaii refinery (the "Kapolei Refinery") in 2017. For the reasons described herein, EPA is granting IES's request for an extension of the Kapolei Refinery's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] Because the Kapolei Refinery's first ranking (disproportionate impacts) and second ranking (viability) are both greater than 1, DOE's recommendation to EPA is a 100 percent waiver for the Kapolei Refinery (i.e., a full extension of the Kapolei Refinery's temporary exemption).

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.
[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that DOE found that the Kapolei Refinery demonstrated unfavorable structural conditions. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that DOE found the Kapolei Refinery's viability was impacted; DOE determined that the cost of compliance with its RFS obligations would impair efficiency gains and impact the refinery's economic viability.[3] Therefore, DOE recommended a 100 percent waiver for the Kapolei Refinery on the basis of both structural conditions and viability concerns.

Table 1[4]
DOE Evaluation of IES's Petition for the Kapolei Refinery

1	Disproportionate Structural Impact Metrics			Score
a	Access to capital/credit		0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	10
b	Other business lines besides refining and marketing		0 = Other Lines, 10 = No Other Lines	10
c	Local market acceptance of Renewables		0 = Products accepted, 10 = Product not accepted	
	i	E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	0
	ii	E85	Not scored because of small E85 volumes	
	iii	Biodiesel	Not available	
d	Percentage of diesel production		0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	0
e	Subject to exceptional state regulations		0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	0

[3] From DOE recommendation for the Kapolei refinery transmitted to EPA on February 28, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**			
a	Relative refining margin measure [5]		0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	10
b	Renewable fuel blending (% of production)			
	i	Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	0
	ii	Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii	Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market		0 = niche 5 = moderate niche impact 10 = no niche	10
d	RINs net revenue or cost [6]		0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)			5.0
	Ranking (subtotal x 0.50)			**2.5**
3	**Viability Metrics**			
a	Compliance cost eliminates efficiency gains (impairment)		0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	10
b	Individual special events		0 = no special event, 5 = moderate event, 10 = special event impacting viability	0
c	Compliance costs likely to lead to shut down		0 = not likely to shut down, 10 = likely to shut down	10
	Subtotal (average)			6.7
	Ranking (subtotal x 0.50)			3.3

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

IES submitted a petition to EPA on December 20, 2017, for an extension of the RFS small refinery exemption for the Kapolei Refinery for 2017. In support of its petition, IES

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). IES acquired the Kapolei Refinery on November 1, 2016, and financial data for the IES petition are only available for the period November 1, 2016, through December 31, 2017. The Kapolei Refinery's average gross margin and net margin (excluding financial expenses) for 2017 were $9.00/barrel and -$0.48 /barrel, respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that IES believes demonstrate DEH. IES also submitted supplemental financial information on February 8, 2018. The petition stated that IES must import all feedstocks and blending components from U.S. or international sources. Therefore, because of its location, the refinery faces an economic cost disadvantage compared to U.S. mainland refineries.[7] IES also stated that the costs of acquiring the refinery and its inventory, and securing future feedstocks have resulted in financing arrangements that have leveraged IES's assets and inventories, leaving no assets available to secure additional capital market financing.[8] IES reported a pro-forma net loss of approximately $24.4 million for 2017.[9] IES also reported a net refining margin of negative $0.48/barrel for fiscal year 2017.[10] Although IES can blend most of its gasoline with 10% ethanol, IES stated that the cost of ethanol for blending may be higher than the cost of ethanol paid by a large mainland refinery due to the importation transportation cost.[11] IES stated that their capital budget for operating efficiency and regulatory compliance projects for the next five years to be at least $200 million, in part due to decisions by the previous refinery owner to defer some of these projects.[12]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, IES's petition presents information demonstrating unfavorable structural conditions. IES's petition also presents financial information that documents an operating loss along with other metrics of poor economic performance in 2017. Based on our review of all of the available information about the Kapolei Refinery, and our consultation with DOE, EPA has concluded that the Kapolei Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting IES's request for a temporary extension of the Kapolei Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with DOE's finding that the Kapolei Refinery experienced disproportionate impacts and viability impairment in 2017 and therefore may be granted some level of relief from its 2017 RFS obligations. DOE recommended a 100% waiver, and EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[13]

[7] Petition at 3.
[8] Petition at 7.
[9] IES profit and loss statement for fiscal year 2017, submitted as a petition supplement on December 20, 2017.
[10] Form PI-588, Sec. 3.7, filed as part of the petition, dated June 26, 2017.
[11] Petition at 8.
[12] Petition at 11.
[13] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).

This temporary extension of IES's exemption only applies to transportation fuel produced at the Kapolei Refinery, and does not apply to IES's imported transportation fuel.[14] In CAA section 211(o)(9), Congress created a temporary exemption program for "small refineries," which it defined as refineries with an average annual aggregate daily crude oil throughput of no more than 75,000 barrels, CAA section 211(o)(1)(K); accord 40 CFR 80.1401. Thus, eligibility for the small refinery exemption program depends on the quantity of crude oil a refinery processes and potentially refines into transportation fuel. Imports of finished transportation fuel (i.e., fuel that the refinery itself has not refined from crude oil) do not fit into this scheme.

Moreover, EPA believes it would be inappropriate to exempt a petitioner's imports simply because it owns a small refinery. In the RFS program, Congress specifically distinguished between refineries and importers, see CAA 211(o)(2)(A)(iii), (o)(3)(B)(ii)(I),[15] and created a temporary exemption only for small refineries, not for importers, small or otherwise. Likewise, EPA's regulations provide that the RFS small refinery exemption only applies to "[t]ransportation fuel produced at a refinery by a refiner," not to imports of finished transportation fuel. 40 CFR 80.1441(a).[16]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

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[14] IES's petition stated that in 2017, IES produced only gasoline diesel at the Kapolei Refinery. IES imported diesel into Hawaii, but did not produce any diesel at the Kapolei Refinery. Thus, this exemption only applies to gasoline produced at the Kapolei refinery, not to diesel imports.

[15] See also CAA section 211(o)(5)(A)(i), (o)(5)(E) (distinguishing between refining and importing of transportation fuel).

[16] See also 40 CFR 80.1441(a)(4) ("This exemption shall only apply to refineries that process crude oil through refinery processing units"); 40 CFR 80.1441(e)(1)-(2) (allowing for extensions of the exemption in paragraph (a)); 75 FR 14736 (stating that the original RFS2 small refinery exemption exempts "all transportation fuel produced by small refineries" and that refineries may apply for case-by-case hardship extension of that exemption).

DOE Application of the Small Refinery Scoring Matrix for the United Refining Warren, PA Refinery for Exemption as an Obligated Party under the Renewable Fuel Standard

Background

Section 211(o)(9)(A)(ii) of the CAA required that DOE conduct a study assessing whether the Renewable Fuel Standard (RFS) would impose a "disproportionate economic hardship" on small refineries[1]. This study was required to determine whether the blanket exemption for small refineries as obligated parties under the RFS should be extended for two years after 2010, the year that the blanket exemption expired. EPA was required to grant the continued exemption to all small refineries that were determined by DOE to experience "disproportionate economic hardship" if they became obligated parties after 2010.

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United Refining Warren PA Refinery

In July, 2018, EPA consulted with DOE to aid in their assessment of whether the United Refining Warren PA refinery should receive [redacted] (b)(5) asserted by DOE 2017. DOE is responding to EPA's request by providing updated values for the scoring matrix for this refinery.

Based on the results from the DOE RFS small refinery exemption scoring matrix, described above, the United Refining Warren PA refinery received a score of [redacted] (b)(5) in the structural and economic metric and a score of [redacted] (b)(5) in the viability metric. [redacted] (b)(5) asserted by DOE United Refining Warren PA refinery [redacted] (b)(5) asserted by DOE United Refining Warren PA [redacted] (b)(5) asserted by DOE

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DOE Application of the Small Refinery Scoring Matrix for the United Refining Warren, PA Refinery for Exemption as an Obligated Party under the Renewable Fuel Standard

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United Refining Warren PA Refinery

In July, 2018, EPA consulted with DOE to aid in their assessment of whether the United Refining Warren PA refinery should receive [redacted] 2017. DOE is responding to EPA's request by providing updated values for the scoring matrix for this refinery.

Based on the results from the DOE RFS small refinery exemption scoring matrix, described above, the United Refining Warren PA refinery received a score of [redacted] n the structural and economic metric and a score of [redacted] in the viability metric. [redacted] United Refining Warren PA refinery [redacted] United Refining Warren PA refinery [redacted]

[redacted]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 14, 2019

OFFICE OF
AIR AND RADIATION

Mr. John R. Wagner
Executive Vice President
United Refining Company
15 Bradley Street
Warren, Pennsylvania 16365

Dear Mr. Wagner:

I am writing in response to the petition from United Refining Company ("URC") for a one-year extension of the small refinery exemption for 2017 from the requirements of the renewable fuel standard (RFS) program for URC's refinery in Warren, Pennsylvania (the "Warren Refinery"). As you know, the Clean Air Act (CAA) provided that small refineries would be temporarily exempt from the RFS requirements through December 31, 2010, with an additional two-year extension of that exemption possible through 2012. CAA section 211(o)(9)(A). Small refineries may petition EPA to extend the RFS exemption for the reason of "disproportionate economic hardship." CAA section 211(o)(9)(B) and 40 CFR 80.1441(e)(2). Pursuant to these provisions, URC submitted a petition to EPA dated May 18, 2018 to extend the exemption for the Warren Refinery for 2017.

Based on the information submitted in your petition, and after consultation with the Department of Energy, EPA has decided to grant a one-year extension of URC's RFS small refinery exemption. This means that from January 1, 2017 through December 31, 2017, the Warren Refinery's gasoline and diesel production are not subject to the percentage standards of 40 CFR 80.1405, and URC is not subject to the requirements of an obligated party for fuel produced at the Warren Refinery during that period.

If you have any questions, please contact Byron Bunker of my staff at 734-214-4155.

Sincerely,

Ben Hengst, for

Christopher Grundler, Director
Office of Transportation and Air Quality

Enclosure – Decision Document

Grant of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standard Program For United Refining Company's Warren, Pennsylvania Refinery

Contains Information Claimed by United Refining Company To be Confidential Business Information

Office of Transportation and Air Quality

EPA received a petition from United Refining Company ("URC") dated May 18, 2018, for a one-year extension of the Renewable Fuel Standard (RFS) small refinery exemption for URC's Warren, Pennsylvania refinery (the "Warren Refinery") in 2017. For the reasons described herein, EPA is granting URC's request for an extension of the Warren Refinery's RFS small refinery exemption for 2017.

Section 211(o)(9) of the Clean Air Act (CAA) authorizes the Administrator to temporarily exempt small refineries from their renewable fuel volume obligations under the RFS program on the basis of a finding of "disproportionate economic hardship" (DEH). The statute directs EPA, in consultation with the Department of Energy (DOE), to consider the (DOE) Small Refinery Study and "other economic factors" in evaluating small refinery exemption petitions, but CAA section 211(o)(9) leaves the definition of DEH to the Administrator's discretion for purposes of implementing this exemption provision.

After evaluating information submitted by the petitioner, DOE provides a recommendation to EPA on whether a refinery merits exemption from the RFS. As described in its study, DOE assesses the potential for DEH at a refinery on the basis of two sets of metrics. One set assesses structural and economic conditions that could disproportionately impact the refinery (described as "disproportionate impacts" for purposes of DOE's scoring metrics, and also described as "structural" factors or conditions here). The other set assesses economic factors that could cause viability concerns (described as "viability" for purposes of DOE's scoring metrics, and also described as "economic" factors or conditions here).

In previous year decisions, DOE and EPA considered that DEH exists only when a refinery experiences both disproportionate impacts and viability impairment. In response to concerns that the two agencies' threshold for establishing DEH was too stringent, Congress clarified to DOE that DEH can exist if DOE finds that a small refinery is experiencing *either* disproportionate impacts *or* viability impairment. If so, Congress directed DOE to recommend a 50 percent exemption from the RFS. This was relayed in language included in an explanatory statement accompanying the 2016 Appropriations Act that stated: "If the Secretary finds that either of these two components exists, the Secretary is directed to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the petitioner."[1] Congress then directed EPA to follow DOE's recommendation.[2] Because the Warren Refinery's first ranking (disproportionate impacts) is greater than 1, DOE's recommendation to EPA is a 50 percent waiver for the Warren Refinery (i.e., a partial extension of the Warren Refinery's temporary exemption).

For the purposes of implementing CAA section 211(o)(9) for 2017 small refinery exemption decisions, EPA has determined that DEH can exist on the basis of adverse structural conditions alone. A difficult year may exacerbate economic problems for small refineries that

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[1] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015). The Explanatory Statement is available at: https://rules.house.gov/bill/114/hr-2029-sa.

[2] Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (2017); *See also* Senate Report 114-281 ("When making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.").

face disproportionate impacts, resulting in tangible effects including diminished refining margins, reduced profitability, cash flow limitations that can hinder its ability to acquire renewable fuel credits (Renewable Identification Numbers, or RINs) for compliance, and the potential to impair refinery operations. In addition, small refineries sometimes lack access to capital or credit that can also be necessary to achieve compliance.

In its industry-wide analysis, DOE has found that poor access to capital and credit, lack of other business lines, and high diesel production compared to the industry average can suggest a disproportionate structural impact. Poor refining margins, limited ability to blend ethanol, and market competition can suggest a disproportionate economic impact. As noted above, DOE scores the disproportionate structural and economic impacts together as half of its DEH analysis. Here, EPA acknowledges that DOE found that the Warren Refinery demonstrated unfavorable structural conditions. EPA's review of DOE's analysis is in accord with this conclusion. These conditions disadvantage the refinery relative to larger refineries that may not face similar structural challenges.

DOE also assessed economic factors as the second component of DEH. Here, EPA acknowledges that DOE found the Warren Refinery to be a viable refinery because compliance with its RFS obligations "would not appear, based on the data we analyzed, to threaten the refinery's economic viability."[3] Therefore, DOE recommended a 50% waiver for the Warren Refinery on the basis of structural conditions alone.

Table 1[4]
DOE Evaluation of URC's Petition for the Warren Refinery

1	Disproportionate Structural Impact Metrics		Score
a	Access to capital/credit	0 = Good access (BB- or above credit rating), 5 = Moderate access (rating in B's) 10 = Poor access (C rating or 50% D/E)	5
b	Other business lines besides refining and marketing	0 = Other Lines, 10 = No Other Lines	10
c	Local market acceptance of Renewables	0 = Products accepted, 10 = Product not accepted	
	i E10	0 = High acceptance, 5 = Low acceptance 10= No acceptance	0
	ii E85	Not scored because of small E85 volumes	
	iii Biodiesel	Not available	
d	Percentage of diesel production	0 = D/(G+D) < Industry Avg. 5 = D/(G+D) > Ind. Avg<40%. 10=D/(G+D) > 40%	5
e	Subject to exceptional state regulations	0 = not subject, 5= Some barriers for compliance 10 = subject to exceptional state regulations	0

[3] From DOE recommendation for the Warren Refinery transmitted to EPA on September 13, 2018.
[4] The gray-shaded categories were developed as part of the DOE Small Refinery Study, but DOE has chosen not to assign scores in the gray-shaded categories for any small refinery evaluations at this time. See the DOE Small Refinery Study for DOE's explanation regarding why it does not assign scores for the gray-shaded categories.

2	**Disproportionate Economic Impact Metrics**		
a	Relative refining margin measure [5]	0 = Above 3 year industry average 5 = Positive, below 3 year industry average 10= Negative	5
b	Renewable fuel blending (% of production)		
	i Ethanol blending	0 = 75%+, 5 = 25-74%, 10 = <25%	0
	ii Biodiesel blending (not used)	0 = 1.1% of diesel production, 1 = <1.1%	
	iii Other Advanced Biofuel blending (not used)	0 = some blending, 10 = no blending	
c	In a niche market	0 = niche 5 = moderate niche impact 10 = no niche	10
d	RINs net revenue or cost [6]	0 = revenue > cost, 10 = revenue < cost	
	Subtotal (average)		4.4
	Ranking (subtotal x 0.50)		**2.2**
3	**Viability Metrics**		
a	Compliance cost eliminates efficiency gains (impairment)	0 = no impact on efficiency, 5 = moderate impact, 10 = impact on efficiency	0
b	Individual special events	0 = no special event, 5 = moderate event, 10 = special event impacting viability	0
c	Compliance costs likely to lead to shut down	0 = not likely to shut down, 10 = likely to shut down	0
	Subtotal (average)		0.0
	Ranking (subtotal x 0.50)		0.0

EPA's analysis extends beyond the metrics DOE applies in assessing potential DEH. EPA considers all of the information submitted by a petitioner when it considers "other economic factors" in evaluating a small refinery petition. For example, EPA considers the information submitted by the petitioner that documents or explains relevant economic conditions or business decisions by the petitioner. EPA may also consider other publicly available information regarding the petitioner that informs EPA's evaluation regarding how "other economic factors" may cause a small refinery to experience DEH if required to comply with its RFS obligations.

URC submitted a petition to EPA on May 18, 2018, for an extension of the RFS small refinery exemption for the Warren Refinery for 2017. In support of its petition, URC submitted financial and other information, including a completed DOE survey form PI-588, which specified the factors that URC believes demonstrate DEH. URC stated that diesel production at

[5] DOE has calculated refining industry gross margins and net margins for 2014, 2015, and 2016, based on public data. The average industry gross and net margins for these three years were $11.40/barrel and $6.52/barrel, respectively (net margin only includes direct operating expenses, it does not include financial expenses such as interest, and depreciation/amortization). The Warren Refinery's average gross margin and net margin (excluding financial expenses) for 2014-2016 were $9.47/barrel and $6.37/barrel, respectively.

[6] DOE has not scored this category for any hardship petition evaluations.

the Warren Refinery represents 33.5 percent of its total transportation fuel production, and that this percentage is higher than the industry average.[7]

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its RFS requirements based on a demonstration by the small refinery of DEH. As described above, URC's petition presents information demonstrating unfavorable structural conditions. URC's petition also presents financial information that documents a significant RFS compliance cost along with other metrics of economic performance in 2017. Based on our review of all of the available information about the Warren Refinery, and our consultation with DOE, EPA has concluded that the Warren Refinery will experience DEH that can be relieved in whole or in part by removing its RFS obligations for 2017. Therefore, EPA is granting URC's request for a temporary extension of the Warren Refinery's small refinery RFS hardship exemption for 2017.

EPA's decision is consistent with DOE's finding that the Warren Refinery experienced disproportionate impacts in 2017 and therefore may be granted some level of relief from its 2017 RFS obligations. While DOE recommended a 50% waiver, EPA has decided to grant 100% relief. As explained above, this decision is appropriate under the statutory authority to consult with DOE, consider the 2011 DOE study, and "other economic factors" and it is consistent with the case law recognizing EPA's independent authority in deciding whether to grant or deny RFS small refinery exemption petitions.[8]

This decision is a final agency action for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1), judicial review of this final agency action may be sought in the United States Court of Appeals for the appropriate circuit. This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

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[7] URC petition at 5.
[8] *Sinclair*, 874 F.3d at 1166; *See also Hermes Consol., LLC v. EPA*, 787 F.3d 568, 574-575 (D.C. Cir. 2015); *Lion Oil Co. v. EPA*, 792 F.3d 978, 982-983 (8th Cir. 2015).